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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CV '09 1339 30

Civil No. _____

TERRY L. BEARD, dba TheBigDay.com, and
THE BIG DAY LLC, an Oregon limited
liability company,

Plaintiffs,

v.

PAYPAL, INC., a Delaware corporation,

Defendant.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant PayPal, Inc. ("Defendant") hereby removes this action from the Circuit Court of the State of Oregon for the County of Multnomah (Case No. 0910-14260) to the United States District Court for the District of Oregon pursuant to 28 U.S.C. § 1446. This Notice of Removal is supported by the following facts, and is made without prejudice to Defendant's right to assert that venue in the state court and in this Court is improper, in addition to any other defenses available under Fed. R. Civ. P. 12(b).

JURISDICTION

1. This is a civil action over which this Court has original jurisdiction, under the provisions of 28 U.S.C. § 1332, because it is a civil action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. The state court action is therefore removable by Defendant pursuant to the provisions of 28 U.S.C. § 1441.

2. Plaintiff Terry L. Beard ("Plaintiff Beard") was, at the commencement of this action in state court and still is, domiciled in the State of Oregon. Therefore, Plaintiff Beard is a citizen of the State of Oregon.

3. Plaintiff The Big Day LLC ("Plaintiff Big Day") was, at the commencement of this action in state court and still is, an Oregon limited liability company.

4. Defendant was, at the time of the filing of this action, and still is, a Delaware corporation having its principal place of business in Santa Clara County, California. Therefore, Defendant is a citizen of the State of Delaware and the State of California.

5. Plaintiffs' Complaint asks for the following damages and other relief:

A. On Plaintiffs' First Claim for Relief: For damages in the amount of \$316,148.44, prejudgment interest of nine percent (9%) per annum from April 24, 2009, and attorneys' fees;

B. On Plaintiffs' Second Claim for Relief: For damages in the amount of \$316,148.44, prejudgment interest of nine percent (9%) per annum from April 24, 2009, and attorneys' fees;

C. On Plaintiffs' Third Claim for Relief: For a declaration that Defendant is wrongfully withholding Plaintiffs' money and ordering Defendant to pay all money from Plaintiffs' PayPal account, including prejudgment interest from April 24, 2009 until paid in full;

D. On Plaintiffs' Fourth Claim for Relief: For damages in the amount of \$316,148.44, prejudgment interest of nine percent (9%) per annum from April 24, 2009, and attorneys' fees;

GROUND FOR REMOVAL

6. This action was commenced by Plaintiffs on October 9, 2009, when they filed their Complaint in the Circuit Court of the State of Oregon for the County of Multnomah captioned *Terry L. Beard, dba TheBigDay.com, and The Big Day LLC, an Oregon limited liability company v.*

PayPal, Inc., a Delaware corporation, Case No. 0910-14260 (“State Court Case”).

7. Defendant received a copy of the Complaint in the State Court Case on October 12, 2009 via process server.

8. There have not been any proceedings in the State Court Case since the filing of Plaintiffs’ Complaint.

9. This is an action over which the federal courts have original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because:

A. Complete diversity of citizenship exists between the parties because Defendant is a citizen of the State of Delaware and the State of California, and Plaintiffs are citizens of the State of Oregon; and

B. The amount in controversy in this case exceeds \$75,000, exclusive of interest and costs.

10. This Notice of Removal is being filed within 30 days after the receipt by the Defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action is based, as that period is extended pursuant to Fed. R. Civ. P. 6(a) when the last day of the period falls on a legal holiday. In this case, the thirtieth day after receipt by Defendant of the Complaint filed in the state court was November 11, 2009 (Veterans’ Day, a legal holiday pursuant to Fed. R. Civ. P. 6(a)(4)). Therefore, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

11. True and correct copies of all process, pleadings and orders served upon the Defendant in the State Court Case are attached as Exhibit 1 to this Notice of Removal.

12. Counsel certifies that a copy of this Notice of Removal will be filed with the Clerk of the Circuit Court of the State of Oregon for the County of Multnomah, and that he will give notice of same to counsel for Plaintiffs, as required by 28 U.S.C. § 1446(d).

13. Defendant files this Notice of Removal, and removes this case, preserving in full its right to assert that venue in this Court is improper, in addition to any other defenses available under Fed. R. Civ. P. 12(b).

WHEREFORE, notice of removal of this action is hereby given.

DATED this 12th day of November, 2009.

HOLLAND & KNIGHT LLP

By: 

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